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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 SANTA ANA DIVISION  
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12 LONTEX CORPORATION d/b/a  
13 SWEAT IT OUT®,

14 Plaintiff,

15 v.

16 VIRUS INTERNATIONAL,

17 Defendant.  
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Case No. 8:22-cv-02206-DOC-ADS

**STIPULATED PROTECTIVE  
ORDER**

Discovery Document: Referred to  
Magistrate Judge Autumn D. Spaeth

**I. PURPOSES AND LIMITATIONS**

A. Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section XIII(C), below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal.

**II. GOOD CAUSE STATEMENT**

A. This action is likely to involve customer and pricing lists for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct

of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

### III. DEFINITIONS

A. Action: Lontex Corporation d/b/a SWEAT IT OUT® v. VIRUS International, U.S. District Court for the Central District of California, Case No. 8:22-cv-2206-DOC-ADS.

B. Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

C. "CONFIDENTIAL" Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

D. CONFIDENTIAL-ATTORNEYS' EYES ONLY: Extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

E. Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

F. Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

G. Disclosure or Discovery Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are  
2 produced or generated in disclosures or responses to discovery in this matter.

3 H. Expert: A person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve  
5 as an expert witness or as a consultant in this Action.

6 I. House Counsel: Attorneys who are employees of a party to this Action.  
7 House Counsel does not include Outside Counsel of Record or any other outside  
8 counsel.

9 J. Non-Party: Any natural person, partnership, corporation, association, or  
10 other legal entity not named as a Party to this action.

11 K. Outside Counsel of Record: Attorneys who are not employees of a party to  
12 this Action but are retained to represent or advise a party to this Action and have  
13 appeared in this Action on behalf of that party or are affiliated with a law firm  
14 which has appeared on behalf of that party, and includes support staff.

15 L. Party: Any party to this Action, including all of its officers, directors,  
16 employees, consultants, retained experts, and Outside Counsel of Record (and  
17 their support staffs).

18 M. Producing Party: A Party or Non-Party that produces Disclosure or  
19 Discovery Material in this Action.

20 N. Professional Vendors: Persons or entities that provide litigation support  
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
22 demonstrations, and organizing, storing, or retrieving data in any form or  
23 medium) and their employees and subcontractors.

24 O. Protected Material: Any Disclosure or Discovery Material that is  
25 designated as "CONFIDENTIAL" OR "CONFIDENTIAL – ATTORNEYS' EYES  
26 ONLY."

27 P. Receiving Party: A Party that receives Disclosure or Discovery Material  
28 from a Producing Party.

1 **IV. SCOPE**

2 A. The protections conferred by this Stipulation and Order cover not only  
3 Protected Material (as defined above), but also (1) any information copied or  
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
5 compilations of Protected Material; and (3) any testimony, conversations, or  
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 B. Any use of Protected Material at trial shall be governed by the orders of the  
8 trial judge. This Order does not govern the use of Protected Material at trial.

9 **V. DURATION**

10 A. Even after final disposition of this litigation, the confidentiality obligations  
11 imposed by this Order shall remain in effect until a Designating Party agrees  
12 otherwise in writing or a court order otherwise directs. Final disposition shall be  
13 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
14 with or without prejudice; and (2) final judgment herein after the completion and  
15 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
16 including the time limits for filing any motions or applications for extension of  
17 time pursuant to applicable law.

18 **VI. DESIGNATING PROTECTED MATERIAL**

19 A. Exercise of Restraint and Care in Designating Material for Protection

20 1. Each Party or Non-Party that designates information or items for  
21 protection under this Order must take care to limit any such designation to  
22 specific material that qualifies under the appropriate standards. The  
23 Designating Party must designate for protection only those parts of  
24 material, documents, items, or oral or written communications that qualify  
25 so that other portions of the material, documents, items, or  
26 communications for which protection is not warranted are not swept  
27 unjustifiably within the ambit of this Order.  
28

2. Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

3. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

4. Sweat It Out previously designated materials as Confidential and Confidential Attorneys' Eyes Only in a prior E.D. Pa. trademark case involving Cool Compression and a similar protective order; for efficiency and as the number of mis-designation disputes relating to its materials was minimal, and in furtherance of the efficiency standards of FRCP 1, the level of designation selected in that case may be used here.

B. Manner and Timing of Designations

1. Except as otherwise provided in this Order (*see, e.g.*, Section B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

2. Designation in conformity with this Order requires the following:

a. For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" or "CONFIDENTIAL – AEO" (or synonym) (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing

1 Party also must clearly identify the protected portion(s) (e.g., by  
2 making appropriate markings in the margins).

3 b. A Party or Non-Party that makes original documents  
4 available for inspection need not designate them for protection until  
5 after the inspecting Party has indicated which documents it would  
6 like copied and produced. During the inspection and before the  
7 designation, all of the material made available for inspection shall be  
8 deemed “CONFIDENTIAL.” After the inspecting Party has  
9 identified the documents it wants copied and produced, the  
10 Producing Party must determine which documents, or portions  
11 thereof, qualify for protection under this Order. Then, before  
12 producing the specified documents, the Producing Party must affix  
13 the “CONFIDENTIAL legend” to each page that contains Protected  
14 Material. If only a portion or portions of the material on a page  
15 qualifies for protection, the Producing Party also must clearly  
16 identify the protected portion(s) (e.g., by making appropriate  
17 markings in the margins).

18 c. For testimony given in depositions, that the Designating  
19 Party identify the Disclosure or Discovery Material on the record,  
20 before the close of the deposition all protected testimony.

21 d. For information produced in form other than document and  
22 for any other tangible items, that the Producing Party affix in a  
23 prominent place on the exterior of the container or containers in  
24 which the information is stored the legend “CONFIDENTIAL.” If  
25 only a portion or portions of the information warrants protection,  
26 the Producing Party, to the extent practicable, shall identify the  
27 protected portion(s).  
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1 C. Inadvertent Failure to Designate

2 1. If timely corrected, an inadvertent failure to designate qualified  
 3 information or items does not, standing alone, waive the Designating  
 4 Party's right to secure protection under this Order for such material. Upon  
 5 timely correction of a designation, the Receiving Party must make  
 6 reasonable efforts to assure that the material is treated in accordance with  
 7 the provisions of this Order.

8 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 A. Timing of Challenges

10 1. Any party or Non-Party may challenge a designation of  
 11 confidentiality at any time that is consistent with the Court's Scheduling  
 12 Order.

13 B. Meet and Confer

14 1. The Challenging Party shall initiate the dispute resolution process  
 15 under Local Rule 37.1 et seq.

16 C. The burden of persuasion in any such challenge proceeding shall be on the  
 17 Designating Party. Frivolous challenges, and those made for an improper purpose  
 18 (e.g., to harass or impose unnecessary expenses and burdens on other parties)  
 19 may expose the Challenging Party to sanctions. Unless the Designating Party has  
 20 waived or withdrawn the confidentiality designation, all parties shall continue to  
 21 afford the material in question the level of protection to which it is entitled under  
 22 the Producing Party's designation until the Court rules on the challenge.

23 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

24 A. Basic Principles

25 1. A Receiving Party may use Protected Material that is disclosed or  
 26 produced by another Party or by a Non-Party in connection with this  
 27 Action only for prosecuting, defending, or attempting to settle this Action.  
 28 Such Protected Material may be disclosed only to the categories of persons



1 and under the conditions described in this Order. When the Action has  
2 been terminated, a Receiving Party must comply with the provisions of  
3 Section XIV below.

4 2. Protected Material must be stored and maintained by a Receiving  
5 Party at a location and in a secure manner that ensures that access is  
6 limited to the persons authorized under this Order.

7 B. Disclosure of "CONFIDENTIAL" Information or Items

8 1. Unless otherwise ordered by the Court or permitted in writing by the  
9 Designating Party, a Receiving Party may disclose any information or item  
10 designated "CONFIDENTIAL" only to:

11 a. The Receiving Party's Outside Counsel of Record in this  
12 Action, as well as employees of said Outside Counsel of Record to  
13 whom it is reasonably necessary to disclose the information for this  
14 Action;

15 b. The officers, directors, and employees (including House  
16 Counsel) of the Receiving Party to whom disclosure is reasonably  
17 necessary for this Action;

18 c. Experts (as defined in this Order) of the Receiving Party to  
19 whom disclosure is reasonably necessary for this Action and who  
20 have signed the "Acknowledgment and Agreement to Be Bound"  
21 (Exhibit A);

22 d. The Court and its personnel;

23 e. Court reporters and their staff;

24 f. Professional jury or trial consultants, mock jurors, and  
25 Professional Vendors to whom disclosure is reasonably necessary for  
26 this Action and who have signed the "Acknowledgment and  
27 Agreement to be Bound" attached as Exhibit A hereto;  
28

g. The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

h. During their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound;” and (ii) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

i. Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

2. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

a. the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

b. Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3)

as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

c. the court and its personnel;

d. court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

e. the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

**IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

A. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

1. Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
2. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
3. Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

B. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the Court from which the subpoena or order issued, unless the Party has obtained the Designating

Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**X. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

A. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

B. In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. Promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. Promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. Make the information requested available for inspection by the Non-Party, if requested.

C. If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party

1 shall not produce any information in its possession or control that is subject to the  
2 confidentiality agreement with the Non-Party before a determination by the court.  
3 Absent a court order to the contrary, the Non-Party shall bear the burden and  
4 expense of seeking protection in this court of its Protected Material.

5 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 A. If a Receiving Party learns that, by inadvertence or otherwise, it has  
7 disclosed Protected Material to any person or in any circumstance not authorized  
8 under this Stipulated Protective Order, the Receiving Party must immediately  
9 (1) notify in writing the Designating Party of the unauthorized disclosures, (2) use  
10 its best efforts to retrieve all unauthorized copies of the Protected Material,  
11 (3) inform the person or persons to whom unauthorized disclosures were made of  
12 all the terms of this Order, and (4) request such person or persons to execute the  
13 “Acknowledgment and Agreement to be Bound” that is attached hereto as Exhibit  
14 A.

15 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
16 **PROTECTED MATERIAL**

17 A. When a Producing Party gives notice to Receiving Parties that certain  
18 inadvertently produced material is subject to a claim of privilege or other  
19 protection, the obligations of the Receiving Parties are those set forth in Federal  
20 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
21 whatever procedure may be established in an e-discovery order that provides for  
22 production without prior privilege review. Pursuant to Federal Rule of Evidence  
23 502(d) and (e), insofar as the parties reach an agreement on the effect of  
24 disclosure of a communication or information covered by the attorney-client  
25 privilege or work product protection, the parties may incorporate their agreement  
26 in the Stipulated Protective Order submitted to the Court.  
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### **XIII. MISCELLANEOUS**

#### **A. Right to Further Relief**

1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

#### **B. Right to Assert Other Objections**

1. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

#### **C. Filing Protected Material**

1. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the Court, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court.

### **XIV. FINAL DISPOSITION**

A. After the final disposition of this Action, as defined in Section V, within sixty (60) days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate)

all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section V.

B. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

Dated: 4/5/2023

s/Ben Lewis Wagner  
Ben Lewis Wagner  
TROUTMAN PEPPER  
HAMILTON SANDERS LLP  
Attorneys for Plaintiff

Dated: 4/5/2023

s/Melissa G. Fulgencio  
Melissa G. Fulgencio  
UPLIFT LAW, PC  
Attorneys for Defendant

**FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

Dated: 4/7/2023

/s/ Autumn D. Spaeth  
HONORABLE AUTUMN D. SPAETH  
United States Magistrate Judge

**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have  
 read in its entirety and understand the Stipulated Protective Order that was issue by the  
 United States District Court for the Central District of California on [DATE] in the case of  
 \_\_\_\_\_ [insert formal name of the case and the number and  
 initials assigned to it by the Court]. I agree to comply with and to be bound by all the  
 terms of this Stipulated Protective Order and I understand and acknowledge that failure  
 to so comply could expose me to sanctions and punishment in the nature of contempt. I  
 solemnly promise that I will not disclose in any manner any information or item that is  
 subject to this Stipulated Protective Order to any person or entity except in strict  
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
 the Central District of California for the purpose of enforcing the terms of this Stipulated  
 Protective Order, even if such enforcement proceedings occur after termination of this  
 action. I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_  
 \_\_\_\_\_ [print or type full address and telephone number] as my  
 California agent for service of process in connection with this action or any proceedings  
 related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_